IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANGELA ZORICH, Plaintiff, v. COREY ZAVORKA and ROBERT RINCK Defendants.	))))))))))	Civil Action No. 4:15-cv-0871 CEJ

PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE

COMES NOW Plaintiff Angela Zorich, by and through undersigned counsel, and hereby submits the following Reply to Defendants' Opposition to Plaintiff's Motion for Voluntary Dismissal without Prejudice.

"When deciding whether to exercise its discretion to allow a voluntary dismissal, the district court should consider ... whether the party has presented a proper explanation for its desire to dismiss; whether a dismissal would result in a waste of judicial time and effort; and whether a dismissal will prejudice the defendants." Mullen v. Heikel Filtering Systems, Inc., 770 F.3d 724, 728 (8th Cir. 2014) (citations omitted).

Plaintiff has presented a proper explanation for her desire to dismiss. Defendants point out that the scheduling order has already been modified to accommodate Plaintiff's new counsel. When Plaintiff's counsel entered on the case, they were hopeful to be able to adequately and promptly pursue Plaintiff's rights. However, the complexity of the case has become clearer, and

Plaintiff has therefore determined that it is best for her to seek to dismiss the case without prejudice at this time. Further, the depositions of fact witnesses on November 30, 2016 included information that an unknown officer pointed a gun at the head of Isaiah Zorich, Plaintiff's son. Plaintiff's counsel's previous understanding was that Defendant Zavorka had been identified as that officer, but Isaiah Zorich testified that he did not know who the officer was. While Defendants argue that Plaintiff merely speculates about future events with respect to Mr. Kolde's job prospect and Ms. Matlock's maternity leave, these are factors which are appropriate to consider when determining the needs of Plaintiff's claims.

With respect to judicial economy, Plaintiff will not wrongfully split a cause of action if she files a second suit, because it would be against additional named Defendants. However, a split cause of action is precisely what Plaintiff seeks to avoid in moving for dismissal without prejudice. Nevertheless, she has additional claims that she is able to pursue, and judicial economy will be served by allowing her to bring all claims together in one suit. A dismissal would therefore not waste judicial time and effort.

Defendants have yet to provide any reasons why granting Plaintiff's motion would amount to prejudice against Defendants. Plaintiff stated in her original motion that:

> Should the Court permit Plaintiff to dismiss without prejudice, Plaintiff will agree to use discovery that has already been completed—including depositions and documents—in the pursuit of any new complaint she brings against Defendants. Defendants will not need to repeat discovery that has already been completed.

Pl.'s Mot. to Dismiss, p. 4-5. While the current discovery deadline is January 19, 2017, this case is not scheduled for trial until much later—August 28, 2017. Furthermore, both parties have agreed to apply to the Court for another extension of discovery deadlines if the Court denies this motion. Regardless, then, this litigation will continue to "hang over [Defendants'] heads" for some time, and granting this motion will not prejudice Defendants.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this honorable Court grant her leave to voluntarily dismiss without prejudice all claims in the above-captioned matter, pursuant to 41(a)(2) FED. R. CIV. P., and enter an Order to that effect.

Respectfully Submitted

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on Defendants' counsel of record, listed below, by operation of the Court's ECF/CM system on December 19, 2016:

Priscilla F. Gunn
St. Louis County Counselor's Office
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_/s/ Nicole A. Matlock_______________